Supreme Court, U. S.
FILED
APR 14 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

May Term 1977

No. 76-1424

Audie Dean Richardson, Petitioner

-vs-

The State of South Carolina.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

Charles W. Whiten, Jr.
William L. Thompson
Harold R. Lowery
Attorneys for Petitioner

110 East Benson St.
Anderson, South Carolina
29621

I N D E X

	Page
Jurisdiction	3
Question Presented	3
Statutes Involved	4
Statement of Case	5
Reasons for Granting Writ	10
Conclusion	11

Appendix:

Opinion of South Carolina Supreme Court of September 9, 1976

Denial of Petition for Rehearing of January 14, 1977

Judgment of Circuit Court of Anderson County of September 30, 1975

Journal Entry of Judgment of the Circuit Court

Tenth Judicial Circuit, Anderson County, South Carolina
Verdict
Sentence

IN THE SUPREME COURT OF THE UNITED STATES

May Term 1977

No.

Audie Dean Richardson, Petitioner

-vs-

The State of South Carolina.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF SOUTH CAROLINA

To the Honorable, the Chief Justices and Associate Justices of the Supreme Court of the United States:

Audie Dean Richardson, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of South Carolina entered in the above-entitled case on September 9, 1976 and the denial of petitioner's petition for rehearing entered on January 14, 1977.

OPINIONS BELOW

The opinion of the Supreme Court of South Carolina is unreported and is printed in Appendix hereto. The judgment of the Circuit Court, Tenth Judicial Circuit, Anderson, South Carolina is printed in Appendix hereto. The Journal Entry of Judgment of the Circuit Court, Tenth Judicial Circuit, Anderson, South Carolina is printed in Appendix hereto.

JURISDICTION

The judgment of the Supreme Court of the State of South Carolina was entered on September 9, 1976. A timely petition for rehearing was denied on January 14, 1977. The jurisdiction of the United States Supreme Court is invoked under Title 28 United States Code, Section 1257.

QUESTIONS PRESENTED

I.

Is an accused entitled to an evidentiary hearing relative to whether or not the results of a polygraph examination have reached that level of scientific acceptability as to be admissible in evidence in a criminal trial?

II.

Is a stipulation between a state prosecutor and a Defendant, through his attorney, that the results of a polygraph test taken by the Defendant will be admissible at trial, binding on the State?

III.

Are the results of a polygraph examination which has either (1) reached a level of scientific acceptability and reliability or (2) whose acceptability as evidence in a criminal trial has been agreed upon by the State and the Defendant, admissible in evidence at a criminal trial.

IV.

Did the South Carolina Supreme Court deny the Petitioner due process of law under the 5th and 14th Amendments to the United States Constitution in invoking Rule 23 of the South Carolina Supreme Court Rules dismissing the appeal as manifestly without merit where Questions I, II and III above, previously undecided in the State of South Carolina, were before them for decision?

STATUTES INVOLVED

Rules of the Supreme Court of South Carolina Rule 23

Dismissal of Criminal Appeals Without Merit

After the return in a criminal action shall have been docketed in the Court, the appeal may be dismissed, or the judgment appealed from affirmed, reversal, or other appropriate relief granted, at any subsequent stage of the appeal, if all justices of the Court conclude that the grounds of the appeal are manifestly without merit or that judgment below was clearly erroneous or clearly defective.

UNITED STATES CONSTITUTION
5th Amendment-Due Process

"No person shall be . . . deprived of life, liberty, or property, without due process of law . . ."

UNITED STATES CONSTITUTION
14th Amendment-Citizenship rights
not to be abridged by states.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of live, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF CASE

The Petitioner, Audie Dean Richardson was indicted on a charge of Armed Robbery alleging that he did, on or about December 13, 1974, with the use of a pistol rob a business establishment in Anderson, South Carolina.

Prior to the trial of the case, the Petitioner, through his attorney, requested that Petitioner be given a polygraph test by the State Law Enforcement Division and was refused.

Petitioner's attorney then obtained an agreement from the Anderson County Solicitor whereby a local polygraph expert would administer the test. The Solicitor further agreed with Petitioner and his attorney that the results would be admissible at trial regardless of the outcome.

Petitioner underwent two polygraph examinations from two separate examiners. Both were favorable to petitioner. On September 30, 1975, at the trial of the case, one of the examiners was absent due to sickness and could not attend the trial. Petitioner's attorney moved for a continuance on the grounds that a material witness, the polygraph examiner, was in the hospital and unable to testify.

The Court refused to grant Petitioner's motion on the grounds that the testimony of the expert polygraph examiner was not admissible under any circumstances.

Petitioner's attorney also advised the Court of the presence of the second polygraph examiner in Court and his readiness to testify.

Petitioner's attorney requested that he be given the opportunity to have his polygraph examiner take the stand in order that he might examine him in order for the Court to determine whether or not he was an expert. (T-8)

The trial judge denied Petitioner's motion and based its ruling on the following: "The results of a polygraph, for or against, is not admissible in a court of law in the State of South Carolina . . ."

Petitioner's attorney then asked the trial judge if it was the Court's ruling that the polygraph test was inadmissible even in a case where the State and the defendant agree to put it in without objection? The following colloquy from the record of trial at page 9 best presents the issue arising from the judge's reply and the Solicitor's comments:

THE COURT:
Well, that's not the case here. Mr. Chapman did not say he agreed.

SOLICITOR CHAPMAN:
I agreed to Bill Hall testifying, if the Court ruled. Now the question of evidence, I have no objection to W. O. Hall. . . . . .

THE COURT:
Well, I'll do this. I'll rule first of all that from what I hear from Mr. Chapman, he hasn't agreed for him to testify. Second of all, I don't think the State and the defendant can get together and break the rules of evidence and I'm not going to allow them to be broken in my Court.

SOLICITOR CHAPMAN:
Judge, I do want to clarify. . . . .

THE COURT:
Because I'm going to protect the state.

SOLICITOR CHAPMAN:
As far as Mr. Thompson , when he asked me did I have any objection to W. O. Hall testifying, I told him I did not. Now that is what I told you, isn't that right Bill?

THE COURT:
I think we probably ought to put this on the record to Mr. Thompson. You mentioned this to me last week and I told you then I was not going to let him testify.

MR. THOMPSON:
Yes Sir.

THE COURT:
So this doesn't come as a suprise to you at all.

MR. THOMPSON:
No Sir, it does not. I agree with that Sir.

THE COURT:
I told you I wasn't going to let him and I didn't think the defense and the State could get together and agree to break the rules of evidence. We're going to run the Court according to the rules established by our Supreme Court and our Legislature and that's the way we're going to run it, to the best of my ability.

Later, at page 12 of the record of trial the trial judge ruled:

"I'm going to rule that the results of the polygraph is not admissible regardless of who you call."

The Petitioner's attorney, at the conclusion of the testimony, made a motion for a new trial on the grounds that the Court had erred in refusing to allow the polygraph expert to testify.

The trial judge denied the motion. After the verdict was rendered, Petitioner's attorney again moved for a new trial on the same grounds. The Court denied this motion holding that the testimony was not admissible even if the State consented to it.

On October 10, 1975, Petitioner filed his intent to appeal. Petitioner presented the following assignment of errors to the South Carolina Supreme Court in his appeal:

I.

That His Honor erred in refusing to grant a continuance for the Appellant to produce a material witness who was in the hospital and under subpoena.

II.

That His Honor erred in holding that the State could not waive and had not waived any objection to the admissibility of testimony.

III.

That His Honor erred in holding that an expert in giving a polygraph test cannot testify in a court of law in South Carolina when that is not the rule of eveidence as presently existing.

IV.

That His Honor erred in failing to grant a new trial on the grounds that a polygraph test is inadmissible as a matter of law.

On September 9, 1976, the South Carolina Supreme Court in Memorandum Opinion No. 76-69 dismissed the Appeal pursuant to Rule 23 of the Rules of the South Carolina Supreme Court as manifestly without merit.

On September 13, 1976, Petitioner filed a Petition for Rehearing with the Supreme Court of South Carolina. On January 14, 1977, the Petition for rehearing was denied.

REASONS FOR GRANTING WRIT

The South Carolina Supreme Court, in refusing to address the issues raised in the appeal to that Court as cited herein, has so far sanctioned the lower Court's departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Due process of law demands that Petitioner be afforded the opportunity to establish the scientific acceptability of the results of his polygraph examinations through expert testimony.

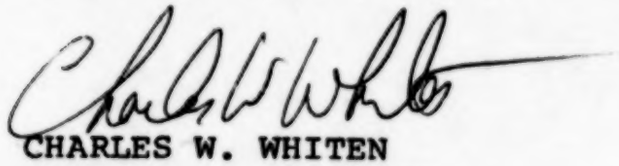
Without the opportunity to present evidence, how could the Defendant ever establish the scientific acceptability of the tests?

Moreover, when the State agrees that a polygraph is admissible, it should be bound by the word of its public officials. A public official is the guardian of a public trust, and recanting the agreements of the State when such agreements don't fit the State's purpose or desire is anathema to that trust.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



CHARLES W. WHITEN
WILLIAM L. THOMPSON
HAROLD R. LOWERY
Counsel for Petitioner
110 East Benson Street
Anderson, South Carolina
29621

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, ... Respondent,

v.

Audie Dean Richardson, ... Appellant.

Appeal From Anderson County
Dan F. Laney, Jr., Judge

Memorandum Opinion No. 76-69
Filed September 9, 1976

APPEAL DISMISSED

William L. Thompson and Harold R. Lowery, both of Anderson, for appellant.

Attorney General Daniel R. McLeod, Assistant Attorneys General Joseph R. Barker and Robert N. Wells, Jr., all of Columbia; and Solicitor V. Laniel Chapman, of Anderson, for respondent.

PER CURIAM: Appellant seeks a new trial after his conviction and sentenc for armed robbery. We find no error and the appeal is dismissed pursuant to Rule 2 of the Rules of this Court.

s/ J. Woodrow Lewis C. J.

s/ Bruce Littlejohn A. J.

s/ J. B. Ness A. J.

s/ Wm. L. Rhodes, Jr. A. J.

s/ George T. Gregory, Jr. A. J.

The Supreme Court of South Carolina

FRANCES H. SMITH
CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211

January 14, 1977

William L. Thompson, Esquire
119 W. Benson Street
Anderson, South Carolina 29621

Re: The State v. Richardson

Dear Mr. Thompson:

The Court has this day refused your petition for rehearing in the above case in the following order:

"Petition Denied.

/s/ J. Woodrow Lewis C.J.

/s/ Bruce Littlejohn A.J.

/s/ J. B. Ness A.J.

/s/ Wm. L. Rhodes, Jr. A.J.

/s/ George T. Gregory, Jr. A.J."

The remittitur is being sent down today.

Very truly yours,

Frances H. Smith

CLERK

FHS/BS

CC: The Honorable Robert N. Wells, Jr.
Assistant Attorney General
P. O. Box 11549
Columbia, South Carolina 29211

Sessions Journal 25, Anderson County, S.C.

75-GS-04-226 The State vs Andrew Dew Richardson

Ind. Armed Robbery
Ind. Larceny

Wm L. Thompson, Attys

The following jurors were drawn to try the case:

1. Cynthia Eatmon
2. Betty Meeker
3. Rachel B. Owens
4. Joan Kay
5. Betty Shiels
6. Isabell Haley
7. Mary [illegible]
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]

Witness for State: 1-Kathy Alexander 2. Frankie Fisher 3. Dora Ferguson 4. Brittie Lineberry 5. Donny Bray 6. Charles Shiels

Motion for directed verdict - [illegible]

Witness for Defense: [illegible]

5. [illegible]

[illegible]

Charge [illegible]

[illegible]

Verdict Guilty

[illegible] verdict NOC - overruled
Motion new trial - overruled
Motion mistrial - overruled
Motion Court erred - overruled.

[illegible] Andrew Dew Richardson
20 years

1-20-75 [illegible]

Order Dismissing Appeal
of Frances H. Smith
1-17-77

BEST COPY AVAILABLE

Judgment of Circuit Court of Anderson County of September 30, 1975.

Guilty of Armed Robbery

Tenth Judicial Circuit, Anderson County, South Carolina.

Verdict - Guilty of Armed Robbery

Sentence - Twenty (20) years confinement to Public Works of Anderson County, or the Department of Corrections.